Office-Supreme Court, U.S.
FILED
MAR 26 1964
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 951

CARPENTERS LOCAL UNION NO. 345 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, and H. A. KELLUM, PRESIDENT, OTTO SCHLAFER, BUSINESS AGENT,
Petitioners,

vs.

HOWARD RUBIN, d/b/a, HOWARD RUBIN AND COMPANY,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE CHANCERY COURT OF SHELBY COUNTY, TENNESSEE

ANTHONY J. SABELLA
1401 Columbian Mutual Tower
Memphis, Tennessee 38103
Attorney for Petitioners

E. L. MENDENHALL, INC., 1108 Oak Street, Kansas City, Mo. 64106, HArrison 1-3030

INDEX

Opinions Below	2
Jurisdiction	2
Questions Presented	2
Statutes Involved	2
Statement	3
Reasons for Granting the Writ	4
Conclusion	5
Appendix A, Statutes Involved	A1
Appendix B, Petition for Writ of Certiorari and Other Relief	A2

CITATIONS

Cases:

Liner v. *Jafco, Inc.*, ... U.S. ....., 84 S. Ct. 391, 48 L.c. Par. 50,985	4
Local No. 438, Construction and General Laborers Union v. *Curry*, 371 U.S. 542	4
IBEW v. *Farnsworth and Chambers*, 353 U.S. 969	4, 5
San Diego Building Trades v. *Garmon*, 359 U.S. 236	4, 5

Statutes:

National Labor Relations Act, As Amended (29 U.S.C., Section 151, *et seq.*)	A1
Tennessee Code Annotated 50-209	A2
Tennessee Code Annotated 27-801	A2

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No.

CARPENTERS LOCAL UNION NO. 345 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, and H. A. KELLUM, PRESIDENT, OTTO SCHLAFER, BUSINESS AGENT,

Petitioners,

vs.

HOWARD RUBIN, d/b/a, HOWARD RUBIN AND COMPANY,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE CHANCERY COURT OF SHELBY COUNTY, TENNESSEE

Carpenters Local Union No. 345 of the United Brotherhood of Carpenters and Joiners of America, H. A. Kellum, President and Otto Schlafer, Business Agent, pray that a Writ of Certiorari issue to review the judgment and order of the Chancery Court of Shelby County, Tennessee. The Supreme Court of Tennessee has denied the petitioners' petition for a Writ of Certiorari to review the order and judgment of the Chancery Court of Shelby County, Tennessee.

OPINIONS BELOW

The Supreme Court of Tennessee rendered no opinion in its denial of the Writ but noted on the petition "Petition denied: White, J., March 12, 1964" (App. B, A5).

The Chancery Court of Shelby County did not render an opinion but in its decree found that picketing violated Tennessee Right-To-Work Law and it had jurisdiction over this matter (R. 14).

JURISDICTION

The decree of the Chancery Court of Shelby County, Tennessee, was entered on February 10, 1964. The Supreme Court of Tennessee denied the Writ on March 12, 1964. The jurisdiction of this Court is involved under 28 U.S.C. 1257 (3).

QUESTIONS PRESENTED

1. May a state court assume jurisdiction of peaceful picketing under its "Right-To-Work" statute (Tennessee Code Annotated 50-209) where the picketing is an arguable violation of the National Labor Relations Act, as amended (29 U.S.C. 151 *et seq.*) or protected concerted activity under that statute.

STATUTES INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended, 29 U.S.C., Section 151 *et seq.*, are set forth in Appendix A.

STATEMENT OF THE CASE

Petitioner labor organization is a labor organization engaged in collective bargaining with building contractors in and around Memphis, Shelby County, Tennessee. The individual petitioners are the main executive officers of the labor organization. Respondent is a building contractor engaged in the construction of a 96 unit apartment project (R. 1).

On January 30, 1964, the respondent filed his original bill for injunctive relief against petitioners seeking an injunction to restrain petitioners and any members, agents, servants or employees from further picketing of any kind (R. 3).

The bill specifically alleged that the picket signs read "Members of the Carpenters Local #345 are not employed by Howard Rubin & Company on this job; that the purpose of said signs and said pickets are to cause the complainant to discharge all its non-union labor and to force your complainant to hire in their stead only union labor" (R. 2). It further alleged that the picketing was "to cause and bring about a union shop. . . : in violation of Section 50-209, Tennessee Code Annotated . . ." (R. 3).

On February 3, 1964, petitioners filed a sworn answer and plea in abatement in which it was averred that the construction project directly affected interstate commerce and therefore was within the exclusive jurisdiction of the National Labor Relations Board (R. 6). Petitioners denied that the object of the picketing was to cause respondents to discharge its non-union employees, averred that it was for the purpose of advising the public that respondent did not employ members of the petitioner labor organization (R. 7).

Petitioners averred that the Chancery Court did not have jurisdiction of the subject matter of the bill because the picketing complained of constituted either unfair labor practices or protected concerted activities affecting interstate commerce over which the National Labor Relations Board had exclusive jurisdiction. Petitioners therefore prayed for dismissal of the bill because of the lack of jurisdiction (R. 7, 8).

The Chancery Court, as is its customary procedure, considered the matter on bill and answer, assumed jurisdiction on the basis of the Tennessee Right-To-Work Law and issued its injunction restraining all picketing (R. 14).

On February 24, 1964, petitioners sought review of the Chancery Court order and judgment because it exceeded its jurisdiction, as it had a right to under Tennessee Code Annotated 27-801 (App. A, A2). On March 12, 1964, by notation on the petition for Writ of Certiorari, the writ was denied (App. B, A5).

Thus there is a final order asserting jurisdiction over a subject matter which is beyond the power of the state court and instead is within the exclusive jurisdiction of the National Labor Relations Board.

REASONS FOR GRANTING THE WRIT

A. The foregoing facts readily reveal that the decision of the Court below is in direct conflict with the decisions of this Court in *San Diego Building Trades* v. *Garmon*, 359 U.S. 236; *IBEW* v. *Farnsworth and Chambers*, 353 U.S. 969; *Local No. 438, Construction and General Laborers Union* v. *Curry*, 371 U.S. 542; *Liner* v. *Jafco, Inc.*, ... U.S. ....., 84 S. Ct. 391, 48 L.c. Par. 50,985 (decided January 6, 1964). The Tennessee Court, in constituting itself a

forum for deciding facts and effectuating a remedy arising out of acts and conduct which were "arguable" either unfair labor practices or protected concerted activity, has asserted jurisdiction in an area which is within the exclusive province of the National Labor Relations Board. The attitude of the Tennessee Court towards this labor controversy and the procedure used to implement such controversy has produced incompatible and conflicting and adjudication at variance with the clear intent of the National Labor Relations Act, as amended, cf. *San Diego Building Trades* v. *Garmon, supra.*

B. The only basis asserted below for assumption of jurisdiction is that the picketing is, or may also be a violation of the Tennessee Right-To-Work Law. This Court has considered and rejected this precise contention in *IBEW* v. *Farnsworth and Chambers* and *Local 438, Construction and General Laborers Union* v. *Curry, supra.*

C. The temporary injunction herein is as final on the issue of jurisdiction as any final order can be and is reviewable as any final order. If permitted to stand it would erode the national labor policy requiring the subject matter to be heard by the National Labor Relations Board. *Local 438, Construction and General Laborers' Union* v. *Curry* and *Liner* v. *Jafco, Inc., supra.*

CONCLUSION

For the reasons set forth, it is respectfully submitted that this petition for Writ of Certiorari should be granted.

Respectfully submitted,

ANTHONY J. SABELLA
1401 Columbian Mutual Tower
Memphis, Tennessee 38103
Attorney for Petitioners

APPENDIX

APPENDIX A

Statutes Involved

National Labor Relations Act, as amended, 29 U.S.C., Section 151 *et seq*

Rights of Employees

"Section 157. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 158 (a) (3) of this title.

Unfair Labor Practices

"Section 158 (b) (2). To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) of this section or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fee uniformly required as a condition of acquiring or retaining membership.

Section 158 (b) (7) (c) . . . *Provided further*, that nothing in this subparagraph (C) shall be construed to prohibit any picketing or other publicity for the purpose of truthfully advising the public (including consumers)

that an employee does not employ members of, or have a contract with a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver or transport any goods or not to perform any services.

Tennessee Code Annotated 50-209.

It shall be unlawful for any person, firm, corporation or association of any kind to enter into any contract, combination or agreement, written or oral, providing for exclusion from employment of any person because of membership in, affiliation with, resignation from, or refusal to join or affiliate with any labor union or employee organization of any kind.

Tennessee Code Annotated 27-801.

The writ of certiorari may be granted whenever authorized by law, and also in all cases where an inferior tribunal, board, or officer exercising judicial functions has exceeded the jurisdiction conferred, or is acting illegally when in the judgment of the court, there is no plain, speedy or adequate remedy.

APPENDIX B

Petition for Writ of Certiorari and Other Relief

To the Honorables, the Chief Justice and the Associate Justices of the Supreme Court of Tennessee:

Petitioners pray that writ of certiorari issue to review the judgment of the Chancellor, Part 2 of the Chancery Court of Shelby County, assuming jurisdiction of a matter reserved exclusively to the National Labor Relations Board

and entering a temporary injunction and enjoining the petitioners and any members of said union, its agents, servants or employees from further picketing on or about the premises described in the original bill.

Your petitioners would show that they are and were very much aggrieved by the judgment of the Court below because it has exceeded its jurisdiction, "or is acting illegally" and that petitioners have no other plain, speedy or inadequate remedy.

Your petitioners would respectfully show, that despite their plea in abatement to the original bill for injunctive relief because the subject-matter was a matter involving unfair labor practices within the coverage of the National Labor Relations Act, as amended, and therefore within the exclusive jurisdiction of the National Labor Relations Board, the Court below assumed jurisdiction because the picketing violated the so-called Tennessee Right-To-Work Law, TCA 50-208, et seq.

The United States Supreme Court has repeatedly held and ruled that state courts have been pre-empted on jurisdiction of acts and conduct which are "arguably" violations of the National Labor Relations Act, as amended. *San Diego Building Trades Council, etc., v. Garmon et al.*, 359 U.S. 236, and cases cited below.

The United States Supreme Court has reversed this Court on the precise findings of the Court below that its jurisdiction is sustainable by reason of the so-called Tennessee Right-To-Work Law. *Local Union 429 v. Farnsworth and Chambers Company*, 353 U.S. 969, reversing 201 Tenn. ..... 299 S.W.2d 8; *Liner v. Jafco*, ... U.S. ....., reversing Tenn. Court of Appeals, decided January 6, 1964. See also *Local No. 438 Construction and General Laborers Union v. Curry*, 371 U.S. 542, on this precise point.

Petitioners have procured a certified copy of the record and have attached it to this petition as Exhibit "A".

PREMISES CONSIDERED, PETITIONERS PRAY:

1. The transcript of the proceedings in this cause in the Chancery Court, Part 2, Shelby County, certified by the Clerk and Master of said Court to be a full, true and perfect transcript thereof, and this petition for the writ of certiorari and other relief, tendered herewith be, by fiat, ordered filed with and by the Clerk of the Supreme Court.

2. That this case be placed upon the docket of this Court for argument and that the judgment and order of the Chancery Court, Part 2, Shelby County, be reviewed and reversed and that a judgment be rendered herein for petitioners.

3. That the petitioners have such other, further, and general relief to which they may be entitled.

THIS IS THE FIRST APPLICATION FOR A WRIT OF CERTIORARI IN THIS CASE.

/s/ Anthony J. Sabella
Anthony J. Sabella
Attorney for Petitioners

STATE OF TENNESSEE)
)
COUNTY OF SHELBY)

I, Anthony J. Sabella, being duly sworn, make oath that I am Attorney for petitioners; that I am familiar with the facts stated in the foregoing petition and that the same are true, except those stated on information and belief and those I believe to be true; and that further that in my opinion, petitioners are entitled to the relief prayed.

/s/ Anthony J. Sabella

Sworn to and subscribed before me this 19th day of February, 1964.

/s/ R. H. Pearson
Notary Public

My Commission expires: August 29, 1965

Notice of Hearing

To: Al H. Thomas, Esq., Solicitor for Respondents
81 Madison Building
Memphis, Tennessee

Please take notice that I will present the above and foregoing petition to the Supreme Court of Tennessee, or one of the Justices, in Nashville, Tennessee on the 24th day of February, 1964, at 9:30 o'clock A.M., and seek the relief prayed for therein.

CERTIFICATE OF SERVICE

I, Anthony J. Sabella, Attorney for petitioners in this cause, hereby certify that I have served a copy of the above and foregoing petition upon Al H. Thomas, Esq., by delivering a copy of the same to him at his office in the 81 Madison Building, Memphis, Tennessee, this 20th day of February, 1964.

/s/ Anthony J. Sabella
Anthony J. Sabella

Petition denied.

White, J.

March 12, 1964